



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0570]

RIN 1625-AA00

Safety Zone; 520 Bridge Construction, Lake Washington, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Washington around the east span of the 520 Bridge in Seattle, Washington due to ongoing construction. The safety zone is necessary to ensure the safety of the maritime public and workers involved in the bridge construction when construction barges are located in the east span of the bridge. The safety zone will prohibit any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port or his Designated Representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through October 5, 2015. For the purposes of enforcement, actual notice will be used from September 5, 2015 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0570 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ryan Griffin, Waterways Management Division, Coast Guard Sector Puget Sound; telephone (206) 217-6051, e-mail SectorPugetSoundWWM@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the

Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule exists as notice would be impracticable due to the unexpected construction delays. It would be impracticable to publish an NPRM as the safety zone must be in effect by September 5, 2015

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the construction of the east span of the 520 Bridge.

III. Legal Authority and Need for Rule

Ongoing construction on the 520 Bridge in Seattle, Washington is creating hazardous conditions around the construction. A safety zone is necessary to ensure the safety of the maritime public and workers involved in the bridge construction when construction barges are located in the east span of the bridge. As construction was originally intended to be completed by September, a temporary final rule was established on June 22, 2015 through September 4, 2015 to protect the construction personal, maritime public, and the marine environment around the east span of the 520 bridge during times of construction operations (see 80 FR 38944, July 8, 2015). However, as construction has needed to continue, a new safety zone is needed to ensure safety.

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Puget sound (COTP) has determined that potential hazards associated with bridge construction starting September 5, 2015 will be a safety concern for anyone within a 100-yard radius of the 520 Bridge east span construction operations. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone

while the bridge is being repaired.

IV. Discussion of the Rule

The safety zone established in this rule encompasses all waters within 100 yards of the east span of the 520 Bridge, located on Lake Washington and is effective from September 5, 2015 through October 2, 2015 when a construction barge is present in the safety zone. Vessels wishing to enter the safety zone must request permission to do so from the Captain of the Port by contacting the Joint Harbor Operations Center at 206-217-6001 or VHF Channel 16. If permission for entry is granted, vessels must proceed at a minimum speed for safe navigation.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

1. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This rule is not a significant regulatory action as the safety zone established by it is both limited in size and duration and there is an alternative route for vessels with an air draft that permits safe passage under the west span of the bridge.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: owners or operators of vessels intending to transit the safety zone. This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons stated under paragraph D.1., Regulatory Planning and Review.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast

Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “FOR FURTHER INFORMATION CONTACT” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of

voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict vessel traffic from transiting the Indian River Bay along the shoreline of Long Neck, Delaware, in order to protect the safety of life and property on the waters for the duration of the fireworks display. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;
Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-290 to read as follows:

§ 165.T13-290 Safety Zone; 520 Bridge, Lake Washington; Seattle, WA.

(a) Location. The following area is designated as a safety zone: all waters within 100 yards of the east span of the 520 Bridge located on Lake Washington in Seattle, Washington.

(b) Regulations. In accordance with the general regulations in subpart C of this part, no person may enter the safety zone or bring or cause to be brought any vessel into the safety zone without permission of the Captain of the Port. Persons wishing to enter the safety zone must request permission from the Captain of the Port by contacting the Joint Harbor Operation Center at 206-217-6001 or VHF Channel 16. If permission for entry is granted, vessels must proceed at a minimum speed for safe navigation.

(c) Dates. This rule is effective from September 5, 2015 through October 2, 2015 when a construction barge is present inside the safety zone.

Dated: September 3, 2015.

M.W. Raymond,
Captain, U.S. Coast Guard,
Captain of the Port Puget Sound.

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